

APPEAL NO. 020134
FILED MARCH 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 18, 2001. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. In its appeal, the appellant (carrier) challenged that determination as being against the great weight of the evidence. Specifically, the carrier maintains that the claimant's decision to pursue a doctorate degree, as opposed to her impairment from her compensable injury, caused her reduced earnings in the qualifying period. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable psychological injury on _____; that the claimant reached maximum medical improvement on November 27, 1998, with an impairment rating (IR) of 35%; that the claimant did not commute her impairment income benefits (IIBs); that the claimant's preinjury average weekly wage (AWW) was \$964.00; that the claimant's average weekly earnings during the qualifying period were \$289.66; that the 4th quarter of SIBs ran from September 1 to November 30, 2001; and that the qualifying period ran from May 19 to August 17, 2001. The claimant testified that while she was working as a flight attendant, she received two written death threats and that after she received the second threat, she could not go back to the airport. She testified she has not been medically cleared to return to her job as a flight attendant; however, she further testified that she has flown and is comfortable doing so provided she does not fly on the airline she worked for when she received the threats. The claimant testified that in September of 1998, she began pursuing her doctorate of education. During the qualifying period at issue, the claimant worked 30 hours per week for the same university where she was pursuing her doctorate and worked 20 to 25 hours per week on her dissertation. The claimant completed her doctorate in August 2001 and was hired as a full-time professor at the university.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, and who has not commuted any IIBs, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. Rule 130.102(c) provides that an "injured employee has earned less than 80% of the employee's [AWW] as a direct result of the impairment from the compensable injury if the impairment from the

compensable injury is a cause of the reduced earnings.”

The hearing officer determined that the claimant sustained her burden of proving that her underemployment was a direct result of the impairment from her compensable injury. That determination is so against the great weight of the evidence as to be clearly wrong. The overwhelming weight of the evidence demonstrates that the claimant’s only restriction from her compensable injury was on her ability to fly on the airline where she worked at the time of her injury. Such a showing does not establish that the claimant had significant restrictions as a result of her compensable injury such that she could not reasonably return to the job of a flight attendant. In the absence of such a showing, there is insufficient evidence in the record to support the hearing officer’s determination that the claimant’s underemployment in the qualifying period was a direct result of her impairment from the compensable injury. Accordingly, we reverse the hearing officer’s determination that the claimant’s underemployment during the qualifying period for the fourth quarter was a direct result of her impairment from the compensable injury and render a new decision that her underemployment in the qualifying period was not a direct result of her impairment from the compensable injury.

Given our reversal of the hearing officer’s direct result determination, we likewise reverse the determination that the claimant is entitled to SIBs for the fourth quarter. The hearing officer’s decision and order are reversed and a new decision rendered that the claimant is not entitled to SIBs for the fourth quarter.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge